IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL No.2070 of 2003

K. Askar Ali .. Appellant

vs.

1.The Corporation of Tirunelveli
rep. By its Commissioner
Tirunelveli 6.

2.The Examiner of Local Funds Accounts
Local Fund Audit Department
Fourth Floor, Kuralagam
Chennai 108. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order of The Learned single Judge (His Lordship Mr. Justice E. Padmanabhan) in W.P.No.12435 of 1996 dated 24.10.2002.

WP No.12435 of 1996 : The writ petition filed under Article 226 of the constitution of India. Prayed for the issuance of writ of certiorarified mandamus to call for the proceedings of the 1st respondent in order No.C2/7483/94 dated 9.4.1996, quash the same and to direct the respondents to refix the date of the petitioner attaining the special order as 1.10.84 and consequently increase the pletitioner's pension benefits and refund the sum of Rs.25,474.

For appellant : Mr. K. Ilias Ali

For respondents : Mr. P. Subramanian
Government Advocate

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JUDGMENT
(Judgement of the Court was delivered by P. SATHASIVAM,J.)

The above writ appeal is directed against the order of the learned Single Judge dated 24.10.2002 made in W.P.No.12435 of 1996 in and by which the learned Judge, after finding no illegality or error of jurisdiction in the proceedings, dismissed the writ petition.

2. For convenience, we shall refer the parties as arrayed in the writ petition.

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3. According to the petitioner, he was appointed as a Bill

Collector of the then Tirunelveli Municipality, now upgraded as Corporation, on 31.10.1962. He was suspended on 17.6.1975 on some minor charges and thereafter, he was removed from service on 31.7.1976. He preferred an appeal to the Inspector of Municipalities, who, by his order dated 6.10.1979 modified the punishment of removal into one of punishment of reduction of pay in two stages from Rs.180/- to Rs.170/-. Then, the Municipal Commissioner, by his order dated 17.7.1980 regularised his period of suspension from 17.6.1975 to 30.7.1976. In the said order, it was also stated that regarding the period from 31.7.1976 to 21.11.1979, separate orders would be issued. On 11.1.1991, the first respondent passed an order to the effect that as per G.O.Ms.No.1013 dated 17.9.1990, the Bill Collectors, now known as Revenue Assistants, who had completed 20 years of services were entitled to a special grade and increase in pay and as such, the petitioner was given the special grade and his pay was revised as on 1.10.1984 from Rs.705-1230 to Rs.905-1545 and his further increment in salary upto 1.10.1990 was indicated as Rs.1500-2040. This clearly shows that the first respondent had taken into account the period from 31.7.1976 to 22.12.1979 while calculating total years of service of the petitioner. By order dated 29.4.1994, the first respondent permitted the petitioner to retire from service. The petitioner also received a letter stating that the Director of Municipal Administration, in his proceedings M.M.74410/94/S1, dated 2.3.1995, regularised the period from 31.7.1976 to 22.11.1979 as leave without pay. However, the petitioner received a letter dated 26.7.1995 from the second respondent, Examiner of Local Funds Accounts, which was addressed to the first respondent stating that since the period from 25.11.1975 to 22.11.1979 was treated as leave without pay, the petitioner was entitled to special category only from 28.10.1986. In other words, the above period which was treated as leave without pay was not considered as part of period of service. When the said order was issued, the petitioner retired from service. Since the petitioner was given the increase in pay from 1.10.1984, in view of the said order, the petitioner had to repay a sum of Rs.25,474/- to the first respondent. The first respondent has also issued an order on 26.7.1995 to recover the said amount. On 2.1.1996 the second respondent addressed a letter to the first respondent which is called pension payment order stating that the total period of employment of the petitioner was 27 years 6 months and 2 days, fixing his pension as Rs.707/-. In the letter, it is also indicated that gratuity amount due to the petitioner was Rs.24,902/- and the arrears was Rs.25,474/- and thus, a balance of Rs.572/- only was due to the petitioner. Subsequently, the first respondent on 9.4.1996 passed an order relating to the pension benefits of the petitioner. As the respondents have acted arbitrarily and in a capricious manner, having no other effective remedy, the petitioner has filed the present writ petition seeking to quash the proceedings of the first respondent dated 9.4.1996 and to issue further direction to the respondents to fix the date of his attaining special grade as 1.10.1984 and consequently, increase his pension benefits and refund the sum of Rs.25,474/-.

4. Though Rule NISI was issued in the year 1996 and finally the writ petition came to be disposed of on 24.10.2002, admittedly, the respondents have not filed counter affidavit conveying their stand to the Court.

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5. The learned Judge, after finding that the petitioner has not

challenged the orders that had been passed in between 1980 and 1985, approved the order of recovery and dismissed the writ petition, by order dated 24.10.2002. Hence, the present writ appeal.

6. Heard learned counsel for the appellant as well as learned Government Advocate for the respondents.

7. It is not in dispute that originally the petitioner was removed from service on 31.7.1976, however, on appeal preferred by the petitioner, he was reinstated into service with effect from 22.11.1979. In the order of reinstatement, the appellate authority, viz., Inspector of Municipalities ordered to treat the suspension period of Bill Collector as leave to which the petitioner is eligible. Accordingly, the suspension period of Bill Collector from 17.6.1975 to 30.7.1976 was ordered to be regularised as per the following details:

"1. 18.6.75 to 25.8.75 = 69 days earned leave.
2. 26.8.75 to 24.11.75 = Three months' leave on private affairs on half pay.
3. 25.11.75 to 30.7.76 = Leave on loss of pay."

In the same proceedings, the Municipal Commissioner observed that orders regarding the period from 31.7.1976 to 21.11.1979 will be issued separately. Based on the same, the Executive Director of Municipalities, Chennai in his proceedings in M.M.74410/94/H1, dated 2.3.1995, passed the following order:

> "The Municipal Commissioner has requested for orders to regularise the period from 31.7.1976 to 22.11.1979 when the above person was removed from service. Hence, the period when he was removed from service from 31.7.1976 to 22.11.1979 is treated as leave without pay and ordered accordingly."

It is clear from the above order that the relevant period, viz., from 31.7.1976 to 22.11.1979 was treated as leave without pay and necessary proceedings were issued by the authority concerned. This is also referred to in the subsequent proceedings of the Auditor, Local Administration, Revenue Accounts, Chennai dated 26.7.1995 addressed to the Commissioner, Tiruvelveli Municipal Corporation.

8. It is not in dispute that accepting the orders/proceedings of the authority, the first respondent passed an order on 11.1.1991 fixing the salary of the petitioner at Rs.905/- and granting him special grade as on 1.10.1984 taking into account that he had completed 20 years of service by then. As rightly pointed out, the order of the Inspector of Municipalities dated 6.10.1979 modifying the punishment of removal from service into one of reduction of pay by two stages from Rs.180/- to Rs.170/-, superseded the order of the first respondent dated 31.3.1977. Therefore, it follows that the period had to be treated as leave without pay. It is also brought to our notice that the Tamil Nadu Pension Rules, viz., Rule 22 of the said Rules deals with the counting of past service on reinstatement, which reads as under:

> "22. Counting past service on reinstatement: --
> (1) A Government Servant who is dismissed, removed or compulsorily retired from service but is reinstated on appeal or review, is entitled to count his past service as qualifying

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service.

(2) The period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be and the date of reinstatement and the period of suspension if any shall not count as qualifying service unless regularised as duty or leave by a specific order of the authority which passed the order of reinstatement."

9. In view of the order passed by the Executive Director of Municipalities dated 2.3.1995 treating the relevant period viz., 31.7.1976 to 22.11.1979 as leave without pay and in the light of Rule 22(2) of the Tamil Nadu Pension Rules, the order passed by the first respondent dated 9.4.1996 cannot be sustained. Unfortunately, all the above-mentioned details were not adverted to by the learned Judge while dismissing the writ petition on the only ground that the petitioner had not challenged the orders which were passed in the years 1980 to 1985. We are unable to accept the reasoning of the learned Judge. By virtue of the above-mentioned proceedings as well as the relevant Rule which we have already referred to, the petitioner is entitled to succeed.

10. In these circumstances, the order of the learned Single Judge dated 24.10.2002 is set aside and the proceedings of the first respondent dated 9.4.1996 are quashed and the respondents are directed to re-fix the date of the petitioner attaining the Special Grade as 1.10.1984 and pass appropriate orders fixing proper pension and other benefits. In view of our said conclusion, the respondents are directed to refund a sum of Rs.25,474/- and also pass fresh orders with regard pension and other benefits on the basis of calculation treating the period from 31.7.1976 to 22.11.1979 as leave without pay, within a period of six weeks from the date of receipt of copy of this order. The writ appeal is allowed with costs. Counsel fee is fixed at Rs.1,000/-.

kh

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Commissioner,
The Corporation of Tirunelveli
Tirunelveli 6.

2.The Examiner of Local Funds Accounts
Local Fund Audit Department
Fourth Floor, Kuralagam
Chennai 108.

+1 cc to M/s.K.Ilias Ali, Advocate Sr.No.18523.
+1 cc to the Government Pleader,Sr.No.18420.

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